IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.548 OF 2005

Ganpat @ Ganesh Tanaji Katare ...Petitioner
Vs.
Assistant Commissioner of Police
and Ors. ...Respondents

Shri.V.V.Purwant for the Petitioner.
Shri. A.S.Gadkari, A.P.P. for the Respondents.

WITH
CRIMINAL WRIT PETITION NO.1598 of 2005

Shri. Salim Mehboob Shaikh ...Petitioner
Vs.
Shri. M.Fernandes & Ors. ...Respondents

Shri. U.N. Tripathi for the Petitioner.
Shri. K.V. Saste, A.P.P. for the Respondents.

WITH
CRIMINAL WRIT PETITION NO.1615 OF 2005

Shri. Jayshankar K.Raman ...Petitioner
Vs.
Shri.G. Aswati & Ors. ...Respondents

Shri. U.N. Tripathi for the Petitioner.
Ms S.D. Shinde, A.P.P. for the Respondents.

CORAM : A. S. OKA, J.
DATE : SEPTEMBER 22, 2005.

ORAL JUDGMENT:

1. On the last date, these Petitions were finally heard. Though the facts of these Petitions may be different, some of the questions argued in these Petitions are common and therefore, it will be convenient to decide these Petitions by a common Judgment.

2. In these three Petitions the challenge is to the orders of externment under the Bombay Police Act, 1951 (hereinafter referred to as said Act of 1951) and confirmation thereof in the statutory appeals.

3. In Criminal Writ Petition No.548 of 2005, the learned Counsel appearing for the Petitioner submitted that in the impugned order of externment, there is a reference to the activities of the Petitioner in the Ramlal Chowk area. He submitted that this fact is not mentioned in the show cause notice and therefore, the impugned order is vitiated as reliance is placed on extraneous material. He submitted that order of externment passed against the Petitioner relates to Districts Solapur, Osmanabad and Pune when even according to the assertions made in the show cause notice, the alleged activities of the Petitioner are confined to Solapur. He submitted that in the show cause notice, material details such as date, month and time of the alleged incidents relied upon are not disclosed and therefore, the order passed is in breach of principles of natural justice.

4. In Criminal Writ Petition No.1598 of 2005, the submission of the learned Counsel for the Petitioner is that the show cause notice states that the

Petitioner was proposed to be externed from Greater Bombay, Bombay-suburban, Thane and Raigad districts and whereas in the order of externment additional area of Navi Mumbai is added. He submitted that the order is thus excessive. He submitted that the alleged activities of the Petitioner are confined to Mumbai and therefore, order of externment relating to districts Raigad and Thane is excessive. He has raised other contentions regarding the merits of the order of externment.

5. In Criminal Writ Petition No.1615 of 2005, the learned Counsel for the Petitioner submitted that the order is excessive in as much as for the alleged activities of the Petitioner which are confined to Thane district, he is sought to be externed from limits of Thane district, Greater Bombay, Bombay Suburban district and Raigad district. He submitted that the allegations made in the notice, especially the allegations in the in-camera statements are vague and baseless. He has made submissions as regards the merits of the order of detention.

6. The learned Public Prosecutor appearing in these Petitions have opposed the Petitions. The submission in brief is that the orders are not

excessive and considering the close proximity of the concerned districts, the orders cannot be said to be excessive. It is submitted that material allegations against the Petitioners and the general nature of those allegations is reflected in the show cause notices. It is submitted that this Court cannot interfere with the subjective satisfaction of the authority and therefore, the Petitions may be dismissed.

7. I have considered rival submissions. In Writ Petition No.548 of 2005, I have perused the show cause notice issued to the Petitioner. Reliance is placed in the show cause notice on two offences registered against the Petitioner in Foujdar Chavdi Police Station, Solapur. It is specifically stated in the order of externment that the Petitioner has carried out his activities at Ramlal Chowk Chawl and at other places within the jurisdiction of Foujdar Chavadi Police Station. If the show cause notice is read as it is, a reference is made to the incident of 10th January, 2004 which took place at the place of residence of the first informant at Patil Chawl in Murarji Peth. The Second incident mentioned of 19th February, 2004 has taken place in the place called "Hande Talim". In the order of externment, reliance

has been placed on the prejudical activities of the Petitioner in Murarji Peth and also in Ramlal Chowk. In the show cause notice, there is no specific reference to any prejudical activities of the Petitioner in the area by the name Ramlal Chowk. The learned A.P.P. submitted that area of Ramlal Chowk forms a part of area falling within the jurisdiction of Foujdar Chavdi Police Station. However, the said contention cannot be considered as the show cause notice does not say that. The show cause notice specifically refers to activities of the Petitioner in Patil Chawl, Narsing Girji Mill, and Bhayya Chowk area. In the in-camera statements of witness A and B referred to in the notice there is no reference to any incident at Ramlal Chowk. Thus, it is apparent that the Petitioner had no opportunity to deal with the allegation regarding alleged prejudical activities at Ramlal Chowk. It is also pertinent to note that notice for final disposal was issued by this Court on 07th March, 2005 and thereafter, on various dates the Petition appeared before this Court. No reply has been filed raising the contention that area of Ramlal Chowk is not different from the area which is specifically referred to in the show cause notice. Thus, in the order of externment reliance has been placed on extraneous material in the terms of

prejudicial activities at Ramlal Chowk. Hence, in my view, the order of externment deserves to be set aside only on the ground of violation of principles of natural justice.

9. In the other two Petitions the main submission is that the orders of externment are excessive. In Criminal Writ Petition No.1598 of 2005, reliance is placed on prejudical activities of the Petitioner in the area falling within Mulund Police Station at Mumbai and in the adjoining area. The order of externment has been passed which relates to the districts of Greater Bombay, Thane, Navi Mumbai and Raigad. It is stated in the order of externment that convenient modes of transport are easily available for connecting Mumbai with Thane, Navi Mumbai and Raigad districts as well as with other adjoining districts. In Criminal Writ Petition No.1615 of 2005, the perusal of the order of externment shows that the activities of the Petitioner which are relied upon in the show cause notice relate to various parts of city of Ambernath, Taluka Ambernath ,District Thane. The order of externment however, relates to districts Thane, Greater Bombay, Bomaby Suburban and Raigad district. It must be noted as a matter of fact that no specific reasons are assigned in the said order for

extending the order to Raigad and Mumbai districts.

10. At this stage, a reference will have to be made to various decision of the Apex Court and this Court which are relied upon by the Counsel appearing for the parties. A decision of the Division Bench of this Court reported in 1969 Maharashtra Law Journal Page 387 (Balu Vs. Division Magistrate, Pandharpur) is pressed into service. The challenge in the said Petition was to the order of externment of the Petitioner who was a resident of Pandharpur in District Solapur. The order of externment passed against the Petitioner extended to districts of Solapur, Satara and Pune. One of the challenges to the order of externment was on the ground that the order was excessive. It was argued that Section 56 of the said Act of 1951 authorises externment of a person outside the area within local limits of jurisdiction of the authority making the order as well as such area and any district or districts or any part thereof contiguous thereto. The Division Bench held that these words used in the section cannot be so construed as to enable the authority to extend the area of externment without reference to purpose of externment. In paragraph No.9 of the said decision the Division Bench held thus:

There is a third ground why the impugned order requires to be set aside. Supposing that the two grounds mentioned in clauses 2(h) and 2(i) of the notice permit the externment of the petitioner, it is difficult to understand why the Sub-Divisional Magistrate extended the order to the three revenue districts of Sholapur, Poona and Satara. **Section 56 authorises the externment of a person outside the area within the local limits of the jurisdiction of the authority making the order as well as "such area and any district or districts, or any part thereof, contiguous thereto." These words, however, cannot be so interpreted as to enable the authority to extend the area of externment without reference to the purpose of the externment. In a sense, the whole State of Maharashtra is contiguous to any area within that State. If the authority concerned is not to have an arbitrary and unguided discretion in deciding the area of externment, it must follow that the area must be so chosen as**

> **to meet the situation created by the movements or acts of the person to be externed. Such an interpretation is also necessary in order that Section 56 may be in conformity with Article 19(5) of the Constitution referred to above. The restriction placed by section 56 on the fundamental rights guaranteed by Article 19(1)(d)and (e) of the Constitution cannot be held to be a reasonable restriction, unless the area of externment is restricted to the requirement created by the movements or acts of the persons to be externed.**(Emphasis supplied)

In the facts of the case before the Division Bench it was found that no reasons were given or suggested by the authority for extending the area of externment to the Districts Pune and Satara. The learned A.P.P. Shri. Gadkari appearing in one of the Petitions has placed heavy reliance on the decision of the Apex Court in (1973)1 Supreme Court Cases Page 372 (Pandharinath Shridhar Rangnekar Vs. Deputy Commissioner of Police, The State of Maharashtra). He submitted that the area of externment will have to be

larger than the area to which activities of the externee are confined. He submitted that the object is to isolate the externee. The learned A.P.P. submitted that in the case of Pandharinath (Supra) before the Apex Court, the activities of the externee were confined to Mumbai but the Apex Court confirmed the order passed which related to the districts of Greater Mumbai and Thane.

11. Perusal of the decision of the Apex Court in case of Pandharinath shows that the Apex Court held that excessive order can be set aside because no greater restraint on the personal liberty of the externee can be permitted than what is reasonable in the facts of the case. In fact, the decision of the Division Bench of this Court in the case of Balu (Supra) is quoted by the Apex Court with approval. However, the Apex Court held that Balu's case furnishes no anology to the case of Pandharinath which related to city like Bombay. In paragraph No.15, the Apex Court proceeded to hold thus:

> 15. As regards the last point, it is primarily for the externing authority to decide how best the externment order can be made effective, so as to subserve its real purpose. How long, within the

> statutory limit of two years fixed by Section 58, the order shall operate and to what territories, within the statutory limitations of Section 56 it should extend, are matters which must depend for their decision on the nature of the data which the authority is able to collect in the externment proceedings.

The Apex Court quoted with approval the two unreported decisions of this Court where challenge was to the order of externment passed extending to the Mumbai and Thane districts. In the said two decisions, this court held that it is a matter of common knowledge that the town of Thane which forms part of the area surrounding Mumbai is in an area where large industries have grown contiguous with the industrial area of Greater Mumbai and that the entire industrial area is connected together by several means of communication including suburban trains of which there are several during each day, taxis and bus services. The Apex Court quoted with approval unreported decision of the Division Bench of this Court where the judgment was delivered by Palekar, J (as he then was). In paragraph No.20 the Apex Court held thus:

> **20. These judgments of the Bombay High Court have taken the view that the**

districts of Greater Bombay and Thana form, so to say, a single unit. Palekar J., observes in his judgment in Criminal Application Nos.30 and 93 of 1970: "It may be that the area of operation may be in a particular locality, but if the externment is limited only to that area, then it might be impossible to prevent the externee from visiting that area every day. Any part in Bombay is easily connected by transport with any other part of Greater Bombay and also the Thana District, and if, for example, an externee is externed outside the limits of Greater Bombay, then he should not take more than 15 minutes to reach Kurla from a place like Thana if the latter is excluded from externment. The very object of externment is to make it as difficult as possible to the externee to return to the field of his activities." Tulzapurkar, J., expressed the same view by saying that "the contiguous area of Thana District is intimately connected with the industrial area of Greater Bombay with cheaper and quicker means of

> transport and communication." **According to Bhasme, J., who delivered the judgment of the Bench in Criminal Application No.149 of 1972, "By reason for the means of communication and proximity, the districts of Greater Bombay and Thana are for all practical purposes one local area or one district".** Deshmukh J., in the judgment under the appeal, says that "Greater Bombay and Thana District are intimately connected by several communications". **In matters of local colour and conditions the view so consistently expressed by the learned Judges of the High Court must, in our opinion, be accepted as correct.**(Emphasis supplied)

All that has been said by the Apex Court is that the view expressed by this Court consistently as regards Mumbai and Thane districts will have to be accepted as correct as the view pertains to the matters of local colour and conditions. The view of this Court which is approved is that Greater Bombay and Thane districts are intimately connected considering several modes of communications and other factors. Any part in Mumbai

is easily connected by transport with any other part of Greater Mumbai and Thane districts. Thus, the Apex Court accepted as a matter of fact that the districts Greater Mumbai and Thane are intimately connected as a result of existence of several factors such as contiguous industrial area, availability of suburban trains and they form a single unit. Therefore, the Apex Court confirmed the order of externment of the Petitioner before it whose activities were confined to Greater Mumbai from the two districts of Greater Mumbai and Thane. It must be borne in mind that Apex Court has not disturbed the decision of the Division Bench of this Court in case of Balu Shivling Dombe(Supra). In the case of Balu, as pointed out earlier, this Court held that liberal interpretation cannot be given to the phraseology used in Section 56 of the said Act of 1951 as the Division Bench observed that in a sense the whole State of Maharashtra is contiguous to any area within the State. It must be borne in mind that in the case of Pandharinath (Supra), the Apex Court has not adopted the test of geographical proximity. The test adopted by the Apex Court is based on several factors such as availability of easy modes of transport like suburban trains and more importantly intimate connection. What has been accepted as correct by the Apex Court are the

decisions of this Court rendered after considering the local colour and conditions holding that Greater Mumbai and Thane are intimately connected and form, so to say, a single unit.

12. There cannot be any dispute that considering the facts and circumstances of a particular case, the order of externment need not be restricted to the area in which illegal activities of the externee are carried on. A larger area may always form part of externment order. In a case where activities are confined to particular district and geographically contiguous district is shown to be intimately connected to the said district, the order may extend the both districts. Mere geographical proximity is no ground to extend the order of externment to another district in which there are no objectionable activities by the externee. The decision of the Apex Court in Padharinath's case proceeds on the basis of established intimate connection between Mumbai and Thane Districts. The area to which order of externment is to operate must be chosen with a view to meet the situation created by the objectionable acts of the person sought to be externed.

13. A reference will have also to be made to the

decisions relied upon by the Counsel appearing for the parties. In judgment reported in 1988(2) Bombay Case Reporter Page 724 (Shri.Umar Mohammed Malbari Vs. K.P. Gaikwad & Anr.), the activities of the externee were confined to Thane district and it was held that the order of externment extending to district Thane and district Greater Bombay, district Raigad and district Nashik was excessive. The learned Single Judge in a decision reported in 2001(3) Maharashtra Law Journal Page 926 (Punjabi Gaikwad Vs. State of Maharashtra) held that the order of externment to be illegal in a case where the Petitioner's area of activities were confined to Buldhana district and order of externment was to operate to five other districts. In a case of Kishor Rajaram Durge Vs. The Deputy Commissioner of Police reported in 2003 ALL MR (Cri.) Page 2023 this Court found order of externment to be excessive where activities of the externee were confined to Ulhasnagar town in Thane district and the Petitioner was externed from Thane, Greater Bombay and Raigad districts.

13. Coming back to the facts of the cases in hand, in Criminal Writ Petition No.1598 of 2005 the order of externment alleges the prejudical activities of the Petitioner which are confined to area falling within

the jurisdiction of Mulund Police Station in Mumbai. It is obvious that the order of externment extending to Thane district would have been in consonance with the law laid down by the Apex Court. However, the order is passed which applies to Raigad district alongwith Thane and Mumbai districts. As held by me, mere geographical proximity is no ground to pass order of externment. The order merely recites that there are facilities of communication available between Mumbai and district Raigad. There is nothing in the order to show that the area falling within the jurisdiction of the Mulund Police Station can be said to be intimately connected to the district Raigad. There is nothing stated in the order to show that considering the facts peculiar to the Petitioner there is a necessity of extending the order to district Raigad. Thus, in my view, the order is excessive as it extends to district Raigad. It must be noted that there is another error in the order. The order treats Navi Mumbai as a separate district when it admittedly forms part of the Thane District which is already mentioned in the order. However, it cannot be said that the order is also vitiated due to this error.

15. In so far as Criminal Writ Petition No.1615 of 2005 is concerned, as stated in earlier part of the

judgment, the activities of the Petitioner seem to be only in the town of Ambarnath, Taluka Ambernath, District Thane. However, the order of externment extends to the Thane, Greater Bombay, Bombay suburban and Raigad districts. The order does not record even briefly the necessity of extending the order to Raigad district. By no stretch of imagination it can be said that Raigad district is intimately connected to Ambernath in District Thane and infact that is not the case made out by the State. Therefore, this the order is excessive. The net result is that all three Petitions must succeed.

16. Hence, I pass the following order:

CRIMINAL WRIT PETITION NO.548 OF 2005

i) Rule is made absolute in terms of prayer clause (b).

CRIMINAL WRIT PETITION NO.1598 OF 2005

i) Rule is made absolute in terms of prayer clause ‘B’ and ‘C’.

CRIMINAL WRIT PETITION NO.1615 OF 2005

i) Rule is made absolute in terms of prayer clause ‘B’ and ‘C’.

JUDGE